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(32)

HIGH COURT OF CHHAGGISGAR AT BILASPUR

Cr.Appeal No. 600/1989

Ram Nath

Vs.

State of Madhya Pradesh (now Chhattisgarh)

J U D G M E N T

For Consideration

Sd/-
Dilip Raosaheb
Deshmukh
Judge
22.06.2005

Hon'ble Shri Justice Fakhruddin

Sd/-
Fakhruddin
Judge
25.06.2005

Post for 27.06.2005

Sd/-
Fakhruddin
Judge
25.06.2005

(33)

HIGH COURT OF CHHAGGISGAR AT BILASPUR

Cr.Appeal No. 600/1989

Ram Nath

Vs.

State of Madhya Pradesh (now Chhattisgarh)

CORAM : HON'BLE SHRI FAKHRUDDIN,
HON'BLE SHRI DILIP R. DESHMUKH, JJ

Shri B.N.Pandey, counsel for the appellant.
Shri Akhil Mishra, P.L. for the State.

J U D G M E N T

Per Dilip R. Deshmukh, J.

This appeal is directed against the judgment dated 6th June 1989 by Shri K.L.Kori, II Addl. Sessions Judge, Raigarh in Sessions Trial No.47/89 whereby the accused-appellant has been convicted under Section 302 I.P.C. for committing murder of his grand father 'Chudu' on 7th January 1989 at about 8.30 P.M. in village Ulkhar, Police Station Sarangarh, District Raigarh and sentenced to under go imprisonment for life.

2. It is not disputed that the accused appellant-Ram Nath is the son of Harihar P.W.1 and the grandson of the deceased and Laxmi Bai P.W.2. Daduram P.W.3 is the uncle of deceased 'Chudu and resided in close vicinity of the house of the deceased.

3. Briefly stated the prosecution story is that since about two years prior to the date of occurrence, the accused appellant-Ram Nath and his father Harihar P.W.1 were living in the same house

with the deceased 'Chudu' and Laxmi Bai P.W.2, though in separate rooms. 'Chudu' being an old man was unable to cultivate, and therefore, Harihar P.W.1 was looking after his parents. 'Chudu' and the accused appellant did not go along well and used to fight frequently. On the night of occurrence i.e. at about 8.30 P.M. on 7th January 1989 a quarrel ensued between the accused appellant and 'Chudu' whereupon the accused appellant dealt lathi blows upon 'Chudu' on the head, chest and hand. 'Chudu' succumbed to the injuries in the night inside the house. Harihar P.W.1 who was taking out paddy from the Kotha saw the incident and lodged F.I.R. Ex.P.1 at Police Station Sarangarh on 8th January 1989 at 9.00 A.M. Sub-Inspector Mukesh Khare P.W.8 reached the spot on the same day and prepared Panchnama of the dead body of 'Chudu'. Dr. Iqbal Singh conducted the post-mortem examination 8.1.1989 at 4.00 P.M. on the body of 'Chudu' and found the following wounds:

1) A bony deep lacerated wound on right side of forehead near right temporal area size 4" long;

2) One lacerated wound 1 ½" transverse and linear on posterior aspect of right arm 2" proximal to right elbow. Bony continuity of humerous is lost. Creptatin present. fracture of right humerous was found;

3) A contusion sized 3" x 2"on right side of chest at infra clavicular area; and

4) A lacerated wound on the posterior aspect of the right forearm at its middle sized 1" linear and transverse.

4. Upon dissection, he found that frontal and right bone were fractured with subdural and extradural hemorrhage and right 2nd, 3rd and 4th rib were fractured with clotted blood present. In his

opinion, the cause of death was shock due to intra cranial haemorrhage and injury to vital organs like brain. Death was homicidal in nature. Blood stained soil, simple soil and normal soil were seized vide Ex.P.9. At the instance of the accused appellant, one thick bamboo stick having 5 knots was seized by Mukesh Khare P.W.8 vide Ex.P.8. Upon being sent for chemical examination to the Forensic Science Laboratory, Sagar (M.P.), presence of blood was confirmed on the bamboo stick seized from the accused appellant vide report Ex.P.17. After completion of investigation, the accused appellant was brought to trial.

5. The accused appellant abjured his guilt and did not lead any evidence in defence.

6. The prosecution examined Harihar P.W.1, Laxmi Bai P.W.2, Daduram P.W.3., Ghurau P.W.4, Gopal Prasad Verma P.W.5. All these witnesses turned hostile and did not depose against the accused appellant. Dr. Iqbal Singh P.W.7 proved the post-mortem examination report Ex.P.13 and Sub-Inspector Mukesh Khare P.W.8 proved the fact of lodging of F.I.R. Ex.P.1 by Harihar on 8.1.1989 at 9.00 A.M. and the fact of seizure of bamboo stick on the memorandum of accused appellant.

7. The trial Court upon consideration of the medical evidence of Dr. Iqbal Singh P.W.7 held that death of 'Chudu' was homicidal and could not be caused by fall as was suggested by hostile witness Harihar P.W.1 and Laxmi Bai P.W.2. In paragraph 16, it found that witnesses Harihar P.W.1 and Laxmi Bai P.W.2 had falsely deposed that while taking out paddy, 'Chudu' had a fall

inside the Kotha and sustained injuries. In paragraph 18, the trial Court found that the defence of the accused that the deceased had gone up to remove the paddy and had a fall was wholly unreliable. It also placed reliance upon the factum of lodging of F.I.R. Ex.p.1 by Harihar P.W.1, father of the accused appellant. Reliance was also placed on the testimony of Daduram P.W.3 that at midnight on the date of occurrence Harihar P.W.1 had come to his house and told him that Ramnath had killed his father 'Chudu' whereupon he went to the house of Harihar and found that 'Chudu' was lying inside his room and that blood was oozing from his head and other injuries were present on the body. 'Chudu' was in a state of unconsciousness and was not able to speak. The trial Judge held that the accused appellant was present inside the house on the date and time of occurrence and after the incident went away from his house, as narrated by Daduram P.W.3 which also proved beyond doubt that it was the accused alone who had caused the death of 'Chudu'. On the basis of these findings, the trial Court convicted the accused appellant under Section 302 I.P.C. for committing the murder of 'Chudu' and sentenced him to imprisonment for life.

8. It is settled law that the burden is on the prosecution to prove the guilt of the accused beyond all reasonable doubt. This burden never shifts. The approach of the trial Court has been faulty as it drew inference against the accused on the basis of the lacuna in the defence version. The accused need not establish his

innocence. It is the duty of the prosecution to bring home the guilt of the accused beyond all reasonable doubt.

9. Harihar P.W.1 has stated that at about 11. A.M. while his father 'Chudu' was taking out the paddy from the above Kotha for feeding the cattle, he fell down and found that 'Chudu' had sustained injury in the head and hand and was unconscious. He has denied lodging of F.I.R. as per Ex.P.1. Thus, there is nothing in his testimony against the accused appellant. Laxmi Bai P.W.2 is the widow of the deceased. She has also narrated that in the night her husband 'Chudu' went above the Kotha for taking out the paddy to feed the cattle and had a fall. She has clearly stated that 'Chudu' had sustained injuries due to fall from the above Kotha. This witness is the wife of the deceased. She would not like to shield the accused appellant if he was responsible for causing the death of her husband. Thus, both Harihar P.W.1 and Laxmi Bai P.W.2 who were eye witnesses have not deposed against the accused appellant. The testimony of Daduram P.W.3 that Harihar had told him that Ram Nath had killed his father 'Chudu' is merely hearsay. He has stated that on reaching the house of Harihar, he found that the accused was also present inside the house. This witness has also been declared hostile and was cross-examined by the prosecution. Nothing has been elicited in his cross-examination against the accused appellant. Ghurau P.W. 4 has also deposed that Harihar had told him that his father 'Chudu' had a fall from above the house whereupon he had gone to house of Harihar and saw that 'Chudu' was lying unconscious. This

witness has also denied that Harihar told him that there was a fight between the accused and 'Chudu' wherein the accused had assaulted 'Chudu' by a lathi on the head.

10. So far as the report Ex.P.17 of the Forensic Science Laboratory is concerned, it does not establish that human blood was found on the bamboo stick alleged to have seized from the accused appellant. The testimony of Mukesh Khare P.W.8 that he had seized one bamboo stick from the "Patav" of the house at the instance of the accused is thus of no consequence as also found by the trial Judge in paragraph 15. Thus there is absolutely no evidence in this case which would show that it was the accused appellant who had inflicted fatal blows by a lathi on the deceased and who alone was responsible for causing the death of 'Chudu'. The testimony of Dr. Iqbal Singh P.W.7 only proves that the injuries sustained by 'Chudu' could not be caused by a fall but this alone is not sufficient to bring home the guilt of the accused appellant.

11. It is thus clear that there is absolutely no evidence to connect the accused with the death of 'Chudu'. The trial Judge has stretched his imagination too far and on the basis of the medical evidence alone concluded that the defence version was unreliable and found the accused appellant guilty. This approach of the trial Court was wholly erroneous as the accused appellant was not required to prove his innocence. In this case, since prosecution has not led any evidence to connect the accused with the death of 'Chudu', the conviction of the accused appellant under

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Section 302 I.P.C. and the sentence awarded thereunder cannot be sustained in the eye of law.

12. Consequently, the appeal is allowed. The conviction of the appellant under Section 302 I.P.C. and the sentence awarded thereunder are set aside. The accused appellant is acquitted of the charge under Section 302 I.P.C. His bail bonds shall stand cancelled.

Sd/-
Fakhruddin
Judge
27.06.2005

Sd/-
Dilip Raosaheb
Deshmukh
Judge
27.06.2005

Anjani

YOGENDRA SINGH KANWAR

Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.02.20 13:17:58 +0530